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Annual report of the United Nations High Commissioner for Human Rights

Addendum

Report of the United Nations High Commissioner for Human Rights on the activities of her office in the Plurinational State of Bolivia* **

Summary

The present report provides an overview of the human rights situation in the Plurinational State of Bolivia and the work undertaken by the Office of the United Nations High Commissioner for Human Rights in the country during 2013.

The Bolivian economy performed positively during 2013. Levels of poverty and extreme poverty were reduced. The country surpassed the Millennium Development Goal on the right to safe drinking water two years before the deadline, and the school dropout rate at the primary level continued to decrease.

The country continued to develop measures to combat persisting racism and all forms of discrimination. The principles of non-discrimination were included in the communications programmes of public entities. The comprehensive implementation of the Policy of the Plurinational State of Bolivia against Racism and All Forms of Discrimination (Plan of Action 2012–2015) and the allocation of more resources to that end are, however, pending.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is being issued in English and Spanish only.

** The present document is submitted late in order to reflect the most recent information.

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Protecting the rights of indigenous peoples continues to present a challenge. The elaboration of a consensus draft legal framework on the right to consultation in conformity with international standards is noteworthy. Nevertheless, the lack of consultation on mining is a cause for concern.

Comprehensive Law No. 348 on Guaranteeing Women a Life Free from Violence was promulgated. It represents an important step towards the elimination of gender violence, which is on the increase. Given the situation, urgent implementation of the law is indispensable. The judicial branch (Órgano Judicial), the School for Judges and the Public Prosecutor's Office developed an accelerated training process for judges and prosecutors on the law's application.

Many measures were taken to respond to the profound crisis in the administration of justice, including the analysis of structural problems with a view to improving access to justice, judicial independence and transparency, and institutional management. Delays, corruption, impunity and lack of resources in the judicial system persist. The office continues to monitor emblematic criminal proceedings, where progress is slow.

The reduction in complaints concerning the excessive use by the police of force in the context of social conflicts deserves mention. In the police and the military, cases of abuse by officials against subordinates during training exercises were registered, some serious enough to affect the right to life. Regarding the prison system, critical overcrowding in prisons and the excessive use of pretrial detention continue.

The present report describes activities conducted by the office and includes 12 recommendations formulated by the High Commissioner to contribute to the improvement of the human rights situation in the Plurinational State of Bolivia.

Annex

[English and Spanish only]

Report of the United Nations High Commissioner for Human Rights on the activities of her office in the Plurinational State of Bolivia

Contents

		Paragraphs	*Page*
I.	Introduction	1	4
II.	National context	2–8	4
III.	Human rights situation	9–82	5
	A. Racism and discrimination	9–15	5
	B. Indigenous peoples' rights	16–29	6
	C. Economic and social rights	30–36	8
	D. Women's rights	37–44	9
	E. Administration of justice and the fight against impunity	45–64	10
	F. Rights of victims of unconstitutional regimes	65–67	13
	G. Right to life and physical integrity	68–74	14
	H. Right to personal liberty and the situation in prisons	75–78	15
	I. Human rights defenders and freedom of expression	79–82	16
IV.	Main activities of the office	83–92	16
V.	Recommendations	93	18

I. Introduction

1. In February 2007, the Office of the United Nations High Commissioner for Human Rights signed an agreement with the Government of Bolivia to establish a country office with a mandate to monitor and report on the human rights situation in the country and to provide technical assistance to State institutions and civil society organizations. The agreement was approved by Congress on 13 July 2007 and renewed for a second time, in August 2013, until 21 August 2015.

II. National context

2. On 22 January 2013, during the presentation of his performance report to the Plurinational Legislative Assembly, the President of the Plurinational State of Bolivia, Evo Morales Ayma, introduced the 13 fundamental pillars of the Patriotic Agenda 2025,[1] which focus primarily on the eradication of extreme poverty, the provision of basic public services, food security, sovereignty and equality. The Agenda was the subject of a consultation process throughout the country.

3. In April, the Plurinational Constitutional Court ruled on the constitutionality of the draft of Implementing Law No. 381, finding the participation of President Morales and the Vice-President, Álvaro García Linera, in the next elections to be constitutional, given that re-election would represent the second mandate since the adoption of the 2009 Constitution. The ruling was criticized by the political opposition, who considered that the President and Vice-President would thus be allowed a third consecutive mandate.

4. In July, the results of the 2012 National Population and Housing Census were published. Discrepancies between those results and the preliminary results made public in January 2013 caused controversy and protests. The final results reveal a very low rate of increase in the population of some departments and major cities, and indicate that the percentage of the population self-identifying as indigenous decreased from 62 to 41 per cent.[2] At the request of the Government, a delegation of the Latin American and Caribbean Demographic Centre, an autonomous branch of the Economic Commission for Latin America and the Caribbean (ECLAC), visited the Plurinational State of Bolivia in August to initiate a post-census evaluation.

5. The Government of the Plurinational State of Bolivia transmitted a complaint to the United Nations High Commissioner for Human Rights in relation to the denial of airspace by several European countries when President Morales and his delegation were returning from Moscow to La Paz on 2 July. The allegations of human rights violations were transmitted to the special procedures of the Human Rights Council.

6. Also in July, the Plurinational State of Bolivia presided at the first session of the open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas, held in Geneva.

7. On 2 April, the Plurinational State of Bolivia acceded to the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and, on 12 July,

[1] The text of the President's remarks is available from http://comunicacion.presidencia.gob.bo/docprensa/pdf/20130123-11-36-55.pdf (Spanish only).

[2] As compared to figures from the 2001 census. National Institute for Statistics (INE), 2012 National Population and Housing Census.

acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

8. During 2013, the Plurinational State of Bolivia was reviewed by three treaty bodies: the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (16 and 17 April), the Committee against Torture (16 and 17 May) and the Human Rights Committee (14 and 16 October).

III. Human rights situation

A. Racism and discrimination

9. The Plurinational State of Bolivia continued to develop measures to combat racism and other forms of discrimination. Public institutions included the principles of non-discrimination in their communications programmes and the majority of media outlets stepped up their prevention campaigns. The Ministry of Education issued regulations prohibiting discrimination in schools, and the principles of non-discrimination are on display in numerous private and public locations.

10. The implementation of the Policy of the Plurinational State of Bolivia against Racism and All Forms of Discrimination (Plan of Action 2012–2015) registered limited progress, primarily because the Plan had not been formally adopted by the executive branch.[3] The National Committee against Racism and All Forms of Discrimination, through its communications with the 14 ministries responsible for implementing the 17 programmes contained in the Plan of Action, noted that ministry officials had limited knowledge about the Plan and their respective responsibilities, and also noted the lack of an implementation strategy and corresponding institutional adjustments. In 2014, the National Committee will monitor the Plan's implementation on the basis of indicators.[4]

11. The budget allocation for the National Committee has been insufficient for its institutional development and for the implementation of the Plan of Action. The National Committee was able to conduct only one annual session, thus failing to comply with its regulations, which call for a minimum of two sessions.

12. The Directorate-General for the Fight against Racism and All Forms of Discrimination reported that it had received 151 complaints of racism and/or discrimination, for the most part in urban areas and in the public service, relating to: sexual orientation (21); level of schooling (19); physical appearance (19); cultural identity (17); provenance (14); ideology (14); and age, disability or religion (25). Another 22 cases were dismissed. Only three were sent to the Public Prosecutor's Office, including one involving violence against a member of the lesbian, gay, bisexual, transgender and intersex community.

13. The office is concerned about the intolerance against the lesbian, gay, bisexual, transgender and intersex community expressed by members of the Sucre Municipal Council during the elaboration of its Charter, namely, the members' rejection of that community and their failure to include specific policies of benefit to it. The Human Rights Committee expressed concern about impunity for acts of violence and discrimination related to sexual orientation and gender identity (CCPR/C/BOL/CO/3, para. 7).

[3] Resolution 1/2012, National Committee against Racism and All Forms of Discrimination.
[4] Resolution 4/2013, National Committee against Racism and All Forms of Discrimination.

14. The office welcomes the establishment by the Ministry of Education of the Institute for Language and Culture of the Guaraní People and the Institute for Language and Culture of Afro-Bolivian People, with the objective of developing the capacity for research and dissemination of information on the history and culture of those peoples, thus contributing to their right to cultural identity.

15. On 8 May, Law No. 370 on Migration was enacted, setting out provisions relating to the prevention of harassment and gender and sexual violence, as well as guarantees for the reunification of migrant families. Measures are still needed to prevent the dissemination in the mass media, including by the police, of stereotypes of foreigners suspected of involvement in crime. The Committee on Migrant Workers expressed its concern regarding the persistence of discrimination against migrants by the security forces (CMW/C/BOL/CO/2 and Corr.1, para. 22).

B. Indigenous peoples' rights

16. The situation of indigenous peoples' rights continues to present a challenge. One step forward has been the elaboration of a draft law on prior, free and informed consent and consultation of indigenous peoples, led by the Ministry of the Interior during an 18-month process consisting of three phases: elaboration, dissemination and systematization. The systematized proposal was approved by the majority of indigenous peoples' organizations and is in line with international standards. With the agreement of those organizations, issues relating to compensation and participation in benefits were deferred to later discussions regarding new rules on mining and hydrocarbons.

17. The office continues to be concerned by the lack of consultation of indigenous peoples with regard to mining. The approaches by the Ministry of Mining and Metallurgy towards indigenous representatives did not generate the climate of trust required to draft a law to regulate consultations in that field.

18. In the area of hydrocarbons, the office monitored the implementation of the right to consultation in two emblematic cases: Alto Parapetí and Takovo Mora. The office observed that relevant information was not always presented to communities in an accessible, timely and complete manner and in their own native language.

19. In Alto Parapetí, the consultation was initiated after a private oil company had begun demarcating land with fencing, which had a negative impact on the affected communities. Additionally, through its monitoring work, the office registered some interference in the activity of indigenous organizations by civil servants and company staff and the conditioning of the provision of basic services on the signature of agreements.

20. During the consultation in Takovo Mora, the authorities annulled the initial agreement, thus generating a situation of reduced credibility and trust, which was later improved. Although the affected communities selected their representatives according to their customs in order to facilitate the consultation process, the Ministry did not employ the representatives, arguing that under the rules for public contracting, a person must have a high school certificate to receive remuneration from the State. This could constitute a violation of the rights of indigenous peoples to decide according to their own procedures, as set out in International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

21. In the above-mentioned cases, the Ministry of Hydrocarbons and Energy was unable to comply fully with the right to consultation or with all its obligations to protect indigenous peoples from actions of third party contractors which could violate their rights. Nevertheless, the office recognizes the good will demonstrated and initiatives taken by the

Ministry, through its Vice-Ministry for Energy Development, to improve its performance in consultation processes through training and other technical cooperation efforts.

22. During 2013, initiatives to provide public services to communities in the Isiboro Sécure National Park and Indigenous Territory (TIPNIS) were developed. With regard to the 2012 consultation concerning the proposed construction of a highway in TIPNIS, three reports were presented: one by the Ministry of Public Works, Services and Housing and the Ministry of the Environment and Water, the entities responsible for conducting the consultation; one by the Intercultural Service for Strengthening Democracy (SIFDE), the entity of the Plurinational Electoral Branch responsible for monitoring consultation processes; and one by non-governmental organizations, namely, the Permanent Human Rights Assembly of Bolivia (APDHB) and the International Federation for Human Rights (FIDH).

23. The reports by the ministries and SIFDE reveal that information relating to the inviolability of TIPNIS, the highway construction and measures for safeguarding and developing the territory was provided to the majority of communities on the very day of the consultation and that no social or environmental impact studies were presented. The reports also reveal a context of polarization and threats against those responsible for conducting the consultation. Additionally, some consultations lasted only a few hours and others were conducted at night.

24. According to SIFDE, the consultation process was conducted in 58 of the 69 communities in TIPNIS: 15 agreed to the highway construction without conditions; 41 agreed with conditions, including guarantees and safeguards; 2 rejected the initiative; and 11 impeded the access of the consultation teams.

25. In their report, APDHB and FIDH detailed the concerns of 36 communities they visited during a two-week period, namely, the lack of agreement between the ministries and the TIPNIS Subcentral, one of the three representative organizations in the territory, for the realization of the consultation; the creation of parallel organizations in some communities where the consultation had been rejected and/or prevented; the organization of meetings outside the communities; and the delivery of assistance projects while the consultation was ongoing.

26. More than two years after the police intervention against participants in the Eighth Indigenous March to Defend the Isiboro Sécure National Park and Indigenous Territory in Chaparina, Beni, on 21 September 2011, the Public Prosecutor's Office has brought only two people into custody for investigation. The office is concerned about the slow pace of the judicial process.

27. In June, violence was registered in TIPNIS, when leaders of the TIPNIS Subcentral prevented a meeting between community leaders (*corregidores*), accusing them of not respecting the territory's rules and of supporting the governmental highway construction project. Gumercindo Pradel, president of the Indigenous Council of the South (CONISUR), affiliated with the Confederation of Indigenous Peoples of Bolivia (CIDOB), was attacked. He accused TIPNIS Subcentral representatives of making an attempt on his life and considers that the ordinary justice system should punish the perpetrators. However, the TIPNIS Subcentral representatives consider that the incident occurred in the framework of the application of indigenous justice and therefore filed a conflict of jurisdiction suit before the Plurinational Constitutional Court, which ruled that both justice systems should suspend proceedings relating to the case pending determination of the applicable jurisdiction.

28. The office welcomes the enactment, on 4 December, of Law No. 450 on the Protection of Highly Vulnerable Indigenous Nations and Peoples, aimed at establishing mechanisms and policies to prevent, protect and strengthen safeguards for the systems and ways of life of that population. It will be necessary for the implementing regulations and

complementary rules to guarantee the collective rights of those peoples in an indivisible, comprehensive and interdependent way.

29. The office is concerned about the persistence of forced labour and servitude of numerous Guaraní families.[5] It noted a lack of follow-up to the comprehensive policies under the Transitional Interministerial Plan; they should have been implemented in accordance with a comprehensive development plan for the Guaraní Peoples, which is still pending approval and implementation.

C. Economic and social rights

30. According to ECLAC, the economy of the Plurinational State of Bolivia performed positively in 2013. During the first trimester, the global index of economic activity registered 6 per cent growth, while the Government increased its tax collection by 19 per cent compared to the first trimester of 2012,[6] thus permitting the continuation and extension of social programmes.

31. In December 2012, 78.9 per cent of the population had access to safe drinking water. The country exceeded the Millennium Development Goal on the right to safe drinking water[7] two years before the deadline, thanks to the presidential programmes Mi Agua and Mi Agua II. In relation to the right to sanitation, it is still necessary to strengthen action to accelerate progress.

32. With regard to the right to housing, in 2013, 16,000 housing units with basic services were constructed; with respect to allocation, priority was given to vulnerable groups. Additionally, 866 housing units for victims of natural disasters related to the La Niña phenomenon during the period 2010–2012 were allocated.[8]

33. Regarding the right to education, the Ministry of Education established the obligation of regular schools to enrol children with disabilities and to implement specialized syllabuses and methodologies for students with visual, auditory and mental disabilities.[9] The Ministry of Labour, Employment and Social Security incorporated 409 people with disabilities into the workforce of public institutions. The office welcomes both measures, which represent progress in favour of vulnerable groups.

34. The Juancito Pinto benefit, a subsidy to encourage school attendance, was expanded to include students up to the fourth year of secondary school and students of specialized schools without age or grade limits. According to the Ministry of Education, the school dropout rate at the primary level was reduced from 1.82 per cent in 2011 to 1.69 per cent in 2012.

35. High rates of violence against children were reported in a Ministry of Education study on violence, ill-treatment and abuse in schools, which revealed that 88 per cent of the school population suffered some form of physical or psychological violence. The majority of victims are girls and adolescents. Male students, followed by teachers and fathers, are the principal agents of violence. In response, the Ministry elaborated a plurinational plan to prevent all forms of violence in the school environment, currently being validated by the

[5] Approximately 600 families, according to the Human Rights Committee (CCPR/C/BOL/CO/3), para. 18.

[6] ECLAC, *Economic Survey of Latin America and the Caribbean 2013* (United Nations publication, Sales No. E.13.II.G.3).

[7] 75 per cent coverage by 2015.

[8] Ministry of Public Works, Services and Housing.

[9] Ministerial resolution 1/2013, 2 January 2013.

educational community. The office praises that initiative, but remains concerned about the study's findings.

36. Indicators for six human rights (food, education, health, work, housing and women's right to a life free of violence), developed under the leadership of the National Institute for Statistics (INE) and the Ministry of Justice, with the support of the office, are now in use by 25 public institutions. Approximately 335 indicators have been developed and 30 per cent of the data collected and is available. The development of indicators for the right to water was initiated.

D. Women's rights

37. On 9 March, Comprehensive Law No. 348 on Guaranteeing Women a Life Free from Violence was promulgated, the result of more than a decade of efforts by women's and other civil society organizations. The High Commissioner welcomed the law's enactment, considering that it broadened women's protection from various forms of violence and made the eradication of violence a State priority.[10] That legislation complements other laws, adopted in 2012, that promote the full exercise of women's rights.[11]

38. Law No. 348 is the first law to provide a comprehensive approach to combating violence against women through prevention, care, protection, prosecution and punishment. The Law criminalizes femicide, thus complying with recommendations made by the High Commissioner in her previous report (A/HRC/22/17/Add.2 and Corr.2, para. 91 (c)) and by the Committee on the Elimination of Discrimination against Women in 2008 (CEDAW/C/BOL/CO/4, paras. 24 and 25).

39. Regarding prosecution and punishment, complaints of violence against women were down by 70 per cent compared to the first semester of 2012.[12] This may be explained by the fact that the legislation that was repealed had provided for multiple channels through which victims could file complaints, under family, administrative or criminal jurisdictions, while the new law permits complaints only through the criminal justice system. Pending the creation of specialized courts and prosecutors' offices, criminal judges and prosecutors have taken on the caseload. Although 592 criminal judges and prosecutors received training on the law, that effort may be insufficient to respond to the problem, given the crisis in the criminal justice system. To ensure an effective implementation of the new legislation, the necessary budgetary resources must be allocated at all corresponding levels of the State.

40. The Plurinational Constitutional Court defined the obligation of the Public Prosecutor's Office to adopt, ex officio, protection measures and programmes for women victims of violence in conformity with international human rights standards.[13] Specialized prosecutor's offices for providing victims of violence and of trafficking with priority attention exist only in the capital city of each department. The creation of specialized prosecutor's offices in the provinces and mobile offices is still pending. The Public

[10] Office of the United Nations High Commissioner for Human Rights, press briefing note, 12 March 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13120&LangID=E.

[11] Law on Harassment and Political Violence against Women, Comprehensive Law against Trafficking in Persons and legislation on women's right to health, and the ratification of International Labour Organization Convention No. 189 (2011) concerning Decent Work for Domestic Workers.

[12] According to the National Statistics Department of the Bolivian Police, 61,251 complaints of violence against women were reported.

[13] Plurinational Constitutional Court judgement SCP 33/2013.

Prosecutor's Office adopted protocols for cases brought under Law No. 348, including measures to protect and assist victims and to prosecute perpetrators of crimes against sexual liberty.

41. The Plurinational State of Bolivia still does not have a specific entity responsible for promoting gender policies in judicial institutions. The office received complaints from two female judges of alleged acts of physical and psychological violence within their own institution, which are currently under investigation by the criminal justice system. At the fourteenth Congress of Female Judges from Ibero-America, Bolivian judges formed a commission to promote gender policies and recommended the creation of gender units within judicial institutions.

42. For the first time, women were promoted to the rank of general, two in the police and one in the Armed Forces, representing a step towards gender equality and equity in police and military institutions.

43. The investigations into the killings of two elected female councillors in 2012, Juana Quispe Apaza of Ancoraimes municipality, La Paz, and Daguimar Rivera Ortiz, of Guayaramerín municipality, Beni, related to their political activity and to the fact that they were women, are still in the pretrial stage (A/HRC/22/17/Add.2 and Corr.2, para. 38). In the first case, two alleged intellectual authors, members of the Acoraimes Municipal Council, have been indicted. In the second, the indictment was expanded to include another elected municipal councillor, but the trial is pending since one judge recused himself and another resigned.

44. In the Plurinational State of Bolivia, abortion is the third most common cause of maternal mortality. According to an investigation by Ipas Bolivia,[14] approximately 185 abortions are carried out daily under conditions of risk.[15] Abortion is criminalized except in cases of rape, sex with a minor and incest or when the life of the mother is at risk, but prior judicial authorization is required (CCPR/C/BOL/CO/3, para. 9), thus limiting access to safe abortion even in those cases. Since 2012, the Plurinational Constitutional Court has been reviewing a constitutional challenge of 13 articles of the Criminal Code, including those criminalizing abortion.

E. Administration of justice and the fight against impunity

45. The office considers that while numerous important measures have been adopted by the judicial authorities elected in 2011, those measures have not yet overcome the profound crisis in the administration of justice, characterized by structural problems such as corruption, delays, insufficient coverage of judicial services throughout the country[16] and limited access to justice by vulnerable sectors of the population. Those and other problems have led to a worrisome judicial backlog and, ultimately, impunity.[17]

46. Among the principal problems faced by the criminal justice system which often lead to violations of the rights of both victims of crime and the accused is the high number of pending cases: 75 per cent of the criminal investigations initiated during 2013 are pending

[14] A non-governmental organization dedicated to ending preventable deaths and disabilities from unsafe abortion.

[15] Ipas Bolivia, *Las cifras hablan* (2011), p. 7.

[16] According to the Council of Magistrates, only 43 per cent of the 339 municipalities have a judge (as at 24 May 2013).

[17] According to the latest data available from the Council of Magistrates, in 2012 the overall accumulated judicial backlog of unresolved cases was 54.92 per cent (396,482 pending cases).

resolution in 2014.[18] Another is the excessive and prolonged use of pretrial detention, in some cases exceeding the maximum penalty possible for the crime under investigation. Corruption is another widespread problem in the judicial system.

47. The insufficient coverage of the judicial system is critical. Only 23 per cent of municipalities have a prosecutor, there are only 69 public defenders nationally and the Institute of Forensic Investigation (IDIF) has only 65 experts and 54 forensic doctors nationally.[19]

48. Other problems in the criminal justice system are related to deficiencies in institutional management and to weak judicial control, including frequent changes of prosecutors and suspension of hearings; limited use of abbreviated procedures; abusive use by the parties of excusals, legal challenges and other dilatory recourses; and suspension of proceedings when one of the parties (generally the victim) does not push the process forward. The Felipe Moza case illustrates those issues. A former civic leader in Tarija, Mr. Moza was indicted for acts representing a danger of destruction and causing serious damage, punishable by up to four and six years of imprisonment, respectively, for his alleged involvement in the explosion of a gas pipeline in 2008 in Yacuiba. He has been held in pretrial detention for the past five years. The office is concerned that his time in detention is already equivalent to the sentence he would have to serve if convicted.

49. In the light of that situation, the judicial branch (comprising the Agro-Environmental Court, the Supreme Court of Justice, the Council of Magistrates and departmental tribunals) and the Public Prosecutor's Office analysed structural problems in the justice system,[20] identifying and adopting response measures, which were included in medium-term strategic institutional plans and in operational plans for 2014.

50. The judicial branch and the Public Prosecutor's Office adopted various institutional guidelines to promote judicial independence, and drafted regulations for their respective professional career systems. The Council of Magistrates and the Public Prosecutor's Office approved regulations on disciplinary procedures. The School for Judges and the School for Prosecutors designed the profile of future judges and prosecutors and their respective syllabuses for their introductory training, into which human rights were mainstreamed.

51. To foster transparency in the administration of justice, the transparency units of the judicial branch and of the Plurinational Constitutional Court conducted mid-year public accountability processes for the second consecutive year and began to coordinate with the Ministry of Institutional Transparency and the Fight against Corruption. The Court approved a Code of Ethics for its personnel and created an Internal Audit Unit.

52. In order to improve access to justice, the Council of Magistrates filled 96 judicial vacancies.[21] Between 2012 and 2013, the number of judges increased by 5 per cent in relation to 2011.[22] The judicial branch designed policies to reduce the high rate of backlog, to be implemented from 2014.

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[18] A total of 127,538 pending cases (Council of Magistrates, 2012).

[19] Judicial branch "National Justice Summit", Sucre, 23 and 24 July; Public Prosecution Service "National Meeting of the Public Prosecution Service", Sucre, 10–12 July, organized with the support of the office.

[20] Judicial branch "National Justice Summit"; Public Prosecutor's Office "National Meeting of the Public Prosecutor's Office".

[21] Public Accountability of the Council of Magistrates, August 2013. Those judges still have interim or substitute status and their designation is subject to internal regulations on the judicial career system.

[22] From 776 judges in 2011 to 815 in 2013.

53. The approved budget of judicial institutions[23] was increased by 13 per cent in relation to 2012. Nevertheless, the budget for justice accounts for only 0.53 per cent of the overall State budget, an amount which is insufficient for the implementation of ongoing reforms needed to address grave insufficiencies and deficiencies in the administration of justice.

54. The Plurinational Constitutional Court delivered several judgements in which it put forward arguments based on human rights. In its judgement SCP No. 137/2013, the Court ruled as unconstitutional article 183.I.4 of the Law on the Judiciary — the article that gave the Council of Magistrates the power to suspend judges from the exercise of their functions following the opening of an official investigation —, arguing the need to protect the right of judges to the presumption of innocence, to due process and to not be subjected to advance punishment. Similarly, in SCP No. 2055/2012, published in 2013, the Court ruled as unconstitutional provisions contained in Framework Law No. 31 on Autonomy and Decentralization that allowed for the suspension of elected authorities following a formal indictment, considering it contrary to the presumption of innocence and the political rights of defendants.

55. Regarding indigenous jurisdiction, the Plurinational Constitutional Court defined criteria for the interpretation of Law No. 73 on Jurisdiction Demarcation concerning the personal, territorial and material competence of indigenous jurisdiction, in conformity with relevant international instruments and the Constitution.[24] The judgement is in line with the relevant recommendations of the Committee on the Elimination of Racial Discrimination (CERD/C/BOL/CO/17-20, para. 22).

56. The office remains concerned about the accumulation of judicial complaints against some members of the political opposition and former public officials, mainly for the crime of corruption. In a positive development, the 2012 ruling of the Plurinational Constitutional Court on the unconstitutionality of the offence of defamation against public officials (*desacato*) led to the dismissal of such cases.

57. In August, the opposition Senator, Roger Pinto, who sought asylum in the Embassy of Brazil in May 2012, crossed the border with the personal support of a Brazilian diplomat and without the authorization of the Government of the Plurinational State of Bolivia. The Senator presented a petition for refugee status in Brazil claiming persecution. The Bolivian authorities have submitted to the Government of Brazil documented evidence in relation to criminal cases against him.

Judicial trials of emblematic cases

58. The office continued to monitor emblematic criminal proceedings. In addition to the general problems in the criminal justice system described above, the office observed that trials in those cases often were of very limited duration, did not begin on schedule, were constantly interrupted by recesses and were conducted in a disorderly fashion, which affected compliance with the right to a fair trial of victims and defendants.

(a) Proceedings against the former President, Gonzalo Sánchez de Lozada, for the tragic events of October 2003 (Black October case)

59. In 2011, two former ministers of the government of former President Sánchez de Lozada and five former members of the military high command were convicted for their

[23] Ministry of Justice, judicial branch, Plurinational Constitutional Tribunal, Public Prosecutor's Office, National Public Defence Service and School for Judges.

[24] See Plurinational Constitutional Court judgement SCP No. 26/2013.

responsibility for acts in 2003 that caused the deaths of more than 60 people and wounded 400. In 2013, the Supreme Court of Justice initiated a second request for the extradition of former President Sánchez de Lozada from the United States of America for those events.

(b) Violent racist events of May 2008 in Sucre

60. On 24 May 2008, an opposition group attempted to prevent the visit of President Morales to Sucre, leading to confrontations with the public security forces. Some 60 indigenous people who supported the visit of the President were held against their will by members of the opposition group and were insulted, beaten, harassed and forced to kneel in the public plaza; several were injured. With regard to judicial proceedings, in February 2013 the court declared, in response to a request from 15 defendants, that the statute of limitations had expired for 5 of the 11 crimes for which they had been charged. The trial is at the stage of statements by defendants. The office echoes the recommendation of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, requesting the Government to intensify its efforts to eradicate impunity in those cases and to improve assistance to victims of racial violence (A/HRC/23/56/Add.1, para. 95).

(c) Massacre at El Porvenir

61. Regarding the trial for the violent incidents of September 2008 in Pando during an indigenous march, which led to the deaths of 13 people and left over 50 injured, conditional house arrest was granted to the principal defendant for health reasons and, for the same reasons, there have been few hearings. The oral proceedings are at the final stage of the presentation of documentary evidence. In April, one of the accused was released from detention after having been deprived of his liberty without a judicial order since December 2010.

(d) Alleged terrorist group dismantled in Santa Cruz

62. On 16 April 2008, an alleged terrorist group was dismantled in the city of Santa Cruz in a police operation in which two foreign nationals were killed. Currently, 39 people have been charged: 22 are facing trial (6 are in detention) and 17 were declared to be fugitives. The case was relocated from Tarija back to Santa Cruz owing to the health problems of one of the accused. The trial is at the stage of the reception of oral declarations of defendants.

63. In its opinion No. 63/2011 of November 2011, the Working Group on Arbitrary Detention qualified as arbitrary the detention, since April 2009, of a Hungarian citizen, Elődd Tóásó. In the framework of the case of the dismantled terrorist group, the opinion was again presented to the Bolivian courts by Mr. Tóásó's lawyers in 2013. The courts denied the petition without any written reasoning or pronouncement on the opinion of the Working Group. The Inter-American Commission on Human Rights was also informed of the case at its 149th session.

64. An opposition legislator accused the main prosecutor responsible for the investigation of the case of manipulating evidence, which may have affected the chain of custody. The public prosecutor later resigned and is currently under investigation for alleged extortion from some of the defendants.

F. Rights of victims of unconstitutional regimes

65. The rights of victims of human rights violations committed during the unconstitutional regimes from 1964 to 1982 have still largely not been addressed, although,

in a positive development, in December the Senate approved a draft bill to create a truth commission. The draft is currently before the Chamber of Deputies, which has announced that consultations will be held with organizations that have relevant experience and interest.

66. With regard to reparation to victims, provided for under Law No. 2640 of 2004, the office remains concerned that a high percentage of reparation requests filed have been dismissed owing to the heavy burden of proof imposed on victims. Additionally, the office regrets that the payments made in cases where reparation was approved cover only 20 per cent of the amount agreed.

67. The remains of Hugo Bohórquez Fernández, a victim of enforced disappearance and member of the National Liberation Army, were returned to his family. However, the whereabouts of more than 150 persons who disappeared between 1964 and 1982 remain unknown. There has been no progress in the criminal proceedings for some of those cases, nor in obtaining access to information contained in military archives, which has led to the impunity of the perpetrators of those crimes.

G. Right to life and physical integrity

68. Although complaints regarding the excessive use of force in the context of social conflicts decreased in 2013, the office is concerned about the slow progress of investigations for cases from the past, in particular those relating to the events in Caranavi in 2010 and in Mallku Khota in 2012.

69. The office is concerned about new cases of alleged ill-treatment by officials of their subordinates, particularly conscripts and cadets, during training in the police and the Armed Forces. In February, in the context of a military training exercise, a sub-lieutenant, Ceooly Espinal Prieto, died under unclear circumstances. The Ombudsman's Office concluded in its final report that the State was responsible for the harm to the physical integrity and, ultimately, the death of sub-lieutenant. The Ombudsman's Office also reported on the case of a conscript, Freddy Rodríguez Uño, who in September was allegedly subjected to torture at a military post in Atocha, Potosí. In November, a police cadet, Cinthia Poma, died, allegedly as a consequence of ill-treatment and punishment inflicted during physical exercise sessions. The investigation into the case continues.

70. In contrast, the Public Prosecutor's Office charged the suspects in the case of a sub-lieutenant, Grover Poma, who died in 2011 as a result of beatings by other soldiers and trainers during military combat training. Nevertheless, the legislative assembly has not yet taken action on the recommendation of the Plurinational Constitutional Court, contained in its ruling No. SCP 2540/2012 on the Poma case, that the Military Criminal Code and the Military Code of Criminal Procedure be adjusted so as to guarantee that human rights violations are judged by the ordinary justice system, in compliance with the Constitution and international standards.

71. The office is concerned that cases of lynching still occur, and is also concerned about the lack of effective initiatives by State authorities at the national, departmental and local levels, including effective public prevention campaigns, to combat that phenomenon. As at September 2013, 37 cases of lynching or attempted lynching had been registered, resulting in 10 deaths, including that of a 17-year-old boy.[25] Lynching tends to occur in the periphery of urban areas with limited or no State presence. Insufficient intervention by the police and the Public Prosecutor's Office hinders the prevention of such incidents and

[25] "Informe sobre el ejercicio de los derechos humanos en el Estado Plurinacional de Bolivia: Defensoría del Pueblo 2013", pp. 50–55.

limits subsequent investigations. Nevertheless, the adoption of Law No. 458 on the Protection of Complainants and Witnesses on 19 December represents progress. The office observed that judicial proceedings have produced insufficient or no results.

72. The legislative assembly has not yet modified the definition of the crime of torture under article 295 of the Criminal Code, which is not in conformity with international standards, either with regard to the elements of the crime or its punishment.

73. According to data provided by the State to the Committee against Torture, the police dealt with 42 individual cases of ill-treatment and torture, while the Public Prosecutor's Office registered 36 complaints between March 2006 and February 2013. The Ombudsman's Office informed the Committee that it had issued 91 decisions related to torture and ill-treatment between 2007 and 2012 (CAT/C/BOL/CO/2, para. 10). The office echoes the recommendations made by the Committee against Torture that the State establish a centralized public register for complaints of torture, which should include information about corresponding investigations, prosecutions and criminal or disciplinary sanctions.[26]

74. On 30 December, Law No. 474 creating the Torture Prevention Service (SEPRET) was adopted. While the law indicates that SEPRET will serve as the national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, pending since 2007, the office is concerned that the mechanism's independence will be compromised by its dependence on the Ministry of Justice and that its mandate and powers have not been defined by law.

H. Right to personal liberty and the situation in prisons

75. Structural problems in the prison system continued. Overcrowding and overuse of pretrial detention, with pretrial detainees representing 83.3 per cent of the prison population, are issues of particular concern. According to the Directorate-General of Prisons, there are more than 13,000 inmates in prisons with a capacity for approximately 4,900. The Committee against Torture expressed alarm about the extent of overcrowding and referred to a number of other problems, including cases of sexual violence, particularly against female detainees, restrictions of visiting hours, the transfer of minors from rehabilitation centres and the lack of separation of persons in preventive detention and those convicted of crimes, as well as the need to improve medical attention (CAT/C/BOL/CO/2, para. 18).

76. The situation described above has caused protests by inmates. Through Presidential Decree No. 1723,[27] the Government reopened the possibility of granting pardons and amnesties. Nevertheless, the impact of those measures continues to be limited and other types of measures are urgently required to reduce the prison population.

77. The office is concerned about the lack of effective State control in prisons, which are essentially under the control of the inmates themselves. The authorities have been unable to prevent or control acts of violence. The most serious incident occurred in August in Palmasola Prison in Santa Cruz, when a group of inmates attacked inmates in another

[26] CAT/C/BOL/CO/2, para. 10 and *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 44* (A/56/44), para. 97 (e).

[27] Presidential Decree No. 1145 of 2012 had established and regulated the conditions for a previous period of pardon; Presidential Decree No. 1723 of 2013 established similar conditions for pardons, and in addition included the granting of amnesty for those who were involved in proceedings that could carry prison sentences of fewer than four years.

sector, provoking a fire that killed 35 people, including one boy, and injured more than 50 people.

78. Another cause for concern is the situation of children living in prisons with their detained relatives. According to the Directorate-General of Prisons, as at September, approximately 2,100 children were living in prisons. In June, a riot occurred in San Pedro Prison in La Paz, in reaction to the rape of a 12-year-old girl by her detained relatives. In response, the Government decided to evacuate children from the prison, a measure rejected by inmates. The Ombudsman's Office facilitated the signature of an agreement between detainees of the San Pedro prison and national authorities to evacuate children older than 11 years old. Nevertheless, the Directorate-General of Prisons reported that in October 236 children were still living in San Pedro Prison, of which 98 were between 6 and 13 years old. The office publicly expressed its opposition to that situation, which persists.

I. Human rights defenders and freedom of expression

79. During 2013, fewer attacks against the media, journalists and press workers were reported than in previous years; the cases involved various categories of perpetrators.[28] The most serious case occurred in Caranavi, La Paz, where two journalists of the La Voz de las Mayorías (Voice of the Majority) radio station were the object of attacks and intimidation, and transmission equipment was stolen and furniture burned by residents mobilized in the context of a municipal conflict. Few of the incidents have reached the courts and judicial action has been generally ineffective for those that have.

80. The draft law on transparency and access to public information proposed by the executive branch was sent to the legislative assembly. Although the draft represents significant progress, the office is concerned about the incompatibility of some provisions with international standards, particularly regarding restrictions on access to public information. There is also concern about provisions establishing that additional restrictions may be imposed via decree and about the lack of independence of the institution which would oversee respect for the rights protected under the law.

81. Statements by the Government accusing the Ombudsman, Rolando Villena, of acting in the interests of the opposition, following his request for the removal of a high-level government official in relation to the Chaparina case, raised concern. Following the publication of his 2013 annual report, the Ombudsman expressed concern about the Government's sensitivity to criticism.

82. The office considers that some of the grounds to revoke the legal status of civil society organizations set out in Supreme Decree No. 1597 of 5 June 2013, which regulates Law No. 351 on the Granting of Legal Status to social organizations, non-governmental organizations, foundations and civil non-profit entities, could limit the effective functioning of such entities. The grounds for revoking status relating to public interest and non-compliance with sectoral policies and standards are of particular concern.

IV. Main activities of the office

83. In the framework of the project "Strengthening and increasing the independence of the judicial system in Bolivia", financed by the European Commission and implemented in coordination with the Plurinational Constitutional Court and the judicial branch, the office

[28] According to the Report of Aggressions against Journalists 2013, ONADEM/UNIR Foundation Bolivia, 27 cases were registered between January and October.

helped organize 17 training programmes, including 20 public events, with the participation of 1,794 judicial staff and judges.

84. Under the same project, the office provided technical assistance aimed at strengthening the administration of justice, including to the Council of Magistrates, for its professional career system and disciplinary regime; to the judicial branch, to systematize the jurisprudence of the Supreme Court of Justice and design a communications and transparency policy; and to the Plurinational Constitutional Court, regarding the functioning of departmental coordination units and procedural management guidelines. Conciliation in judicial institutions was also promoted in collaboration with the judicial branch and the Swiss Agency for Development and Cooperation, as was coordination among judicial institutions and between judicial institutions and civil society and indigenous organizations, including through the Judicial Summit and the First National Meeting of Authorities of Indigenous Jurisdiction and the Plurinational Constitutional Court.

85. With the objective of strengthening the right of access to justice of women, the Council of Magistrates, with support from the office, organized the fourteenth Congress of Female Judges from Ibero-America, held from 26 to 28 November in Cochabamba, which concluded with the adoption of an important declaration with action points.

86. In the framework of the joint project "Support for the process of legislative development and implementation of the right to consultation and participation of indigenous peoples in Bolivia", funded by the European Commission, the office conducted, in coordination with other United Nations agencies and national actors, 17 training and public events on the rights of indigenous peoples to consultation, for over 1,000 participants representing 8 public institutions, 45 indigenous organizations, and 4 public and private indigenous universities.

87. Under the same project, the office carried out 33 activities to elaborate, through a participatory methodology, studies of the decision-making systems of the Guaraní of Alto Parapetí, the Suyu Jach'a Karangas and the Mosetén indigenous peoples, with the participation of 760 members of those communities. Additionally, the office conducted 20 missions, amounting to 44 days, to monitor consultation processes in the field of hydrocarbons in Alto Parapetí and Takovo Mora, in order to gather first-hand information about the application of the right to consultation.

88. The office continued to conduct activities in coordination with human rights defenders, organizing the commemoration of the International Day of the World's Indigenous Peoples and technical sessions about their rights, among other activities.

89. In coordination with the Anti-Discrimination Section of the Office of the United Nations High Commissioner for Human Rights in Geneva, the field office supported the National Committee against Racism and All Forms of Discrimination in organizing the first advanced studies course on "Human rights for the prevention of racism and discrimination" for 40 civil servants, which was implemented by the Plurinational School of Public Administration.

90. The office continued to provide technical assistance to the National Committee against Racism and All Forms of Discrimination for the preparation and holding of its regular session, in which 90 per cent of its 60 members participated, issuing nine new resolutions.

91. The office provided technical assistance to the Office of the Deputy Minister for Decolonization for the realization of two national meetings of indigenous public and private universities, with the aim of promoting research on the right to consultation and on racism and discrimination.

92. Regarding the Human Rights Council universal periodic review, the office supported participative processes led by the Ministry of Foreign Affairs and the Ministry of Justice to draft and circulate the State report, promoting the participation of judicial institutions, as well as processes for drafting a civil society report. The office also provided technical assistance to the Ministry of Justice for the elaboration of the new National Human Rights Plan of Action, taking into account recommendations issued under the universal periodic review and by other international mechanisms.

V. Recommendations

93. **The United Nations High Commissioner for Human Rights reiterates her previous recommendations and wishes to make the following recommendations:**

(a) The Government and the Plurinational Legislative Assembly should continue efforts to adopt the draft framework law for the general application of the right to consultation of indigenous peoples developed by the Ministry of the Interior in the framework of international standards and, in the meantime, should ensure respect for that right even in the absence of specific regulations;

(b) The Ministry of Hydrocarbons and Energy should evaluate its practice for conducting consultations, and introduce modifications to guarantee that the realization of such consultations complies fully with relevant international standards;

(c) Relevant authorities should evaluate the results of the consultation conducted in the Isiboro Sécure National Park and Indigenous Territory (TIPNIS) in order to redirect dialogue, taking into account all communities in the territory and processes to facilitate the search for consensus as envisaged in Plurinational Constitutional Court judgement No. 300/2012;

(d) The Government should fully implement the Policy of the Plurinational State of Bolivia against Racism and All Forms of Discrimination (Plan of Action 2012–2015) and increase the allocation of corresponding resources in order to allow for the effective functioning of the National Committee responsible for supervising the Plan;

(e) The national, departmental and municipal authorities should adopt without delay all the necessary measures to implement Comprehensive Law No. 348 on Guaranteeing Women a Life Free from Violence, including the allocation of resources for the creation of specialized courts and public prosecutor's offices, as well as shelters for victims;

(f) The Public Prosecutor's Office and the judiciary should conduct prompt and impartial investigations into and punish those responsible for cases of discrimination and violence against women, including the killing in 2012 of two elected municipal officials, Juana Quispe Apaza and Daguimar Rivera Ortiz, and investigate the complaints of violence against two female magistrates within their institution;

(g) The judicial branch, the Public Prosecutor's Office and the Plurinational Constitutional Court should define institutional policies with a gender perspective, with a view to improving women's access to justice, the labour conditions of female personnel and women's access to the judicial and public prosecutor's career system, among other policies to reduce existing gender gaps and combat gender-based discrimination;

(h) The legislative branch should implement the recommendation made by the Committee on the Elimination of Racial Discrimination to adjust Law No. 73 on

Jurisdiction Demarcation in conformity with the Constitution and international standards (CERD/C/BOL/CO/17-20, para. 22).

(i) The judicial branch and the Public Prosecutor's Office should continue the process of defining and implementing institutional policies to improve access to justice and judicial transparency and independence and to reduce backlog, including through the implementation of judicial conciliation and the judicial and public prosecutor's career system;

(j) The Ministry of the Economy and Public Finance should allocate adequate resources to the administration of the justice sector to implement the above-mentioned reforms;

(k) The Government should continue to respect the independence of the Ombudsman's Office, facilitate the implementation of its resolutions and recommendations and implement measures to allow human rights defenders and civil society organizations to carry out their work in all domains without undue constraints;

(l) The Government and the legislative assembly should modify Law No. 2640, which determines that the Government assumes only 20 per cent of economic reparations to victims of unconstitutional regimes, such that the Government takes charge of the entire amount of the reparations.